

These are the tentative rulings for civil law and motion matters set for Tuesday, June 23, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, June 22, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. S-CV-0027179 Volen, Bart vs. CSCG, Inc., et al**

Plaintiff's Motion to Enter Judgment Against Carlos E. Cortes is granted in part.

Plaintiff and defendant Carlos E. Cortes ("Cortes") executed a Settlement Agreement and Mutual Release by which Cortes agreed to pay plaintiff \$25,000 by monthly payments of \$694.44 commencing October 12, 2012. Cortes made payments totaling \$20,139.32, then defaulted on the agreement on March 15, 2015, and has made no further payments. The agreement provides that if Cortes defaults on the agreement, judgment shall be entered against him in the amount of \$225,000.

Cortes argues that notice of default was not provided as required by the Settlement Agreement. However, plaintiff provides sufficient evidence that notice was provided to the attorney for Cortes as required. Cortes further argues that he has been released from his obligation to make payments under section 1(f) of the Settlement Agreement, which provides that Cortes will be relieved of any further obligations to make monthly payments if plaintiff is deemed to no longer own certain specified property "due to Case No. 1:12-cv-00705-MCE-DAD filed by the United States." However, as Cortes admits that plaintiff has not yet been deemed to no longer own the specified property, Cortes has not been relieved of his obligation to make payments.

Notwithstanding Cortes' default, plaintiff is not entitled to have judgment entered in an amount that exceeds the agreed upon settlement by \$200,000. Where a judgment bears "no reasonable relationship to the range of actual damages the parties could have anticipated would flow from a breach of their settlement agreement" it constitutes an unlawful penalty which

cannot be enforced. *Greentree Financial Group, Inc. v. Execute Sports Inc.* (2008) 163 Cal.App.4th 495, 497. In *Greentree*, plaintiff sued defendant for \$45,000, but agreed to accept settlement in the amount of \$20,000 on the condition that if defendant defaulted on the first payment, plaintiff would be entitled to judgment for the entire amount sought in the complaint. After defendant defaulted on the first payment, plaintiff obtained judgment for \$61,000, which included interest and attorneys' fees. The Court of Appeal held the judgment to be an unlawful penalty, noting that the relevant breach to be analyzed "is the breach of the *stipulation*, not the breach of the *underlying contract*." *Id.* at 499. While a judgment designed to encourage defendant to make settlement payments on time, and to compensate plaintiff for loss of use of the money plus reasonable costs in pursuing the payment would be enforceable, a judgment awarding plaintiff approximately \$40,000 over the settlement amount did not merely compensate plaintiff, it rewarded the plaintiff by penalizing the defendant. *Id.* at 500. Further, this prohibition against unlawful penalties, set forth in Civil Code section 1671(b), will be enforced regardless of whether the defendant admits that the amount of the stipulated judgment constitute monies actually owed. *Purcell v. Schweitzer* (2014) 224 Cal.App.4th 969, 972.

Judgment in the amount of \$225,000 based on Cortes' breach of an agreement to pay \$25,000 would constitute an unlawful penalty under Civil Code section 1671(b) and *Greentree*, *supra*. Accordingly, judgment shall be entered against Cortes per stipulation in the amount of \$25,000, less credit for payments made by Cortes in the amount of \$20,139.32. *See Greentree Financial Group, Inc. v. Execute Sports Inc.*, *supra*, 163 Cal.App.4th at 503; *Sybron Corp. v. Clark Hosp. Supply Corp.* (1978) 76 Cal.App.3d 896, 903.

## **2. S-CV-0028737 Hopkins, Toni Lee vs. Cayton-Sutherland, Robin D., et al**

This tentative ruling is issued by the Honorable Angus Saint-Evens. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 3 located at the Historic Auburn Courthouse:

### Plaintiff's Motion to Strike Cost Memo and Request for Entry of Judgment

#### Request for Judicial Notice

In footnote 8 of plaintiff's memorandum of points and authorities, she makes a request the court take judicial notice "of the pleadings referenced in this Opposition". There is no further identification of the documents. The court denies the request for judicial notice.

#### Ruling on Motion

As an initial matter, the court will review the proposed judgment separately and enter it separately if it is found to conform to the jury's verdict in this case.

As to the remaining issue in plaintiff's motion, she requests the court strike in its entirety defendant the Estate of Luther Edward Cayton, Deceased's (the Estate's) cost memo filed on December 10, 2014. The court notes that the motion is timely brought pursuant to the parties' joint stipulation, filed on March 9, 2015, extending the time for both parties to challenge the

respective cost memos. (CRC Rule 3.1700(b)(3).) Upon a challenge to a verified cost memorandum, the burden is upon the party opposing the costs to show they were not reasonable or unnecessary. (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774; *Nelson v. Anderson* (1999) 72 Cal.Ap.4th 111, 131.) Costs that are properly objected to are put in issue, shifting the burden to the party claiming such costs. (*Ladas v. California State Auto. Assn.*, *supra*; *Fennessy v. DeLeuw-Cather Corp.* (1990) 218 Cal.Ap.3d 1192, 1195-1196.) Thus, the initial burden is upon plaintiff to show the costs were unreasonable or unnecessary. Once this is shown, the burden then shifts to the Estate to establish the validity of the challenged costs. Plaintiff generally challenges the reasonableness or necessity of the substantial costs, amounting to \$81,130.74, stated in the Estate's cost memo. She claims the Estate is not entitled to any costs since (1) the Estate was never a party to the action; (2) State Farm Insurance and counsel for the Estate have no standing to make a claim for costs; (3) the cost memo is an improper method to collect costs for defendant Robin Cayton-Sutherland; and (4) an invalid CCP§998 offer was made.

First, plaintiff's assertion that the Estate was not a party to the action is without merit. Plaintiff specifically named the Estate as a party to this action in her third amended complaint filed on December 21, 2012. The Estate was treated as any other defendant with plaintiff requesting a default on April 17, 2013. The default was subsequently set aside on May 28, 2013 and the Estate filed an answer to the third amended complaint on June 4, 2013. The Estate remained a defendant and party to the action until plaintiff brought an oral motion to dismiss the Estate on October 30, 2014, before the matter was presented to the jury. To say now that the Estate had no legal standing in this action is disingenuous. The Estate has been treated at all times as a defendant and party to the action.

There is also no basis to plaintiff's standing contentions. The court declines to engage in a dispute that predominantly surrounds inartful pleading of the third amended complaint. The issue before the court is whether the Estate, an active defendant and named party in this action, may recover costs as the prevailing party in light of the dismissal. CCP§1032(a)(4) clearly lists "a defendant in whose favor a dismissal is entered" as a "prevailing party" entitled to costs.

As to plaintiff's claim that the cost memo is an attempt by defendant Robin Cayton-Sutherland to circumvent the jury verdict, there is insufficient evidence before the court to make such a determination. Nonetheless, plaintiff's argument also includes an assertion that the Estate has improperly included all costs associated in the defense for both defendants rather than including those costs solely for the Estate. To reiterate, the initial burden of the plaintiff is to show costs were not reasonable or unnecessary. (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774; *Nelson v. Anderson* (1999) 72 Cal.Ap.4th 111, 131.) Upon review of the cost memo, plaintiff is correct in her assertions. The cost memo includes entries for filing fees that occurred on December 8, 2011; April 16, 2012; and June 5, 2012. It also includes entries for depositions that occurred on August 8, 2012 and August 9, 2012. However, the entries for these items could not be attributable to the Estate since it did not become a distinct, named party to the action until December 21, 2012. A close review of the cost memo also reveals that it is incomplete. For example, Items 1g; 5d; 8a(6); 8b(5); and 12c all refer to attachments that are not included in the cost memo. The Estate also fails to include a breakdown of Item 13. This puts into question the reasonableness and necessity of all other costs and shifts the burden to the

Estate to justify them. (*Ladas v. California State Auto. Assn.*, *supra*; *Fennessy v. DeLeuw-Cather Corp.* (1990) 218 Cal.App.3d 1192, 1195-1196.) The Estate's opposition fails to include documentary evidence to support any of their listed costs. With the burden shifted and no evidence to substantiate the reasonableness and necessity of the costs, the entire cost memo is properly stricken on this basis alone.

Plaintiff's final contention is that costs are not awardable since the Estate's CCP§998 offer was not made in good and is, therefore, invalid. There are a few issues raised by the manner in which this argument is framed. First, an objection to CCP§998 costs is limited to postoffer costs and expert witness fees. (CCP§998(c)(1).) It does not sufficiently challenge the totality of the cost memo since the defendant may be entitled to costs as the prevailing party under CCP§1032. (see *Goodstein v. Bank of San Pedro* (1994) 27 Cal.App.4th 899, 910-911.) Second, it is plaintiff who has the burden of showing the offer was not made in good faith. (*Adams v. Ford Motor Co.* (2011) 199 Cal.App.4th 1475, 1484; *Essex Ins. Co. v. Heck* (2010) 186 Cal.App.4th 1513, 1529.) As seen with many of plaintiff's proffered assertions, she focuses upon issues involving defendant Robin Cayton-Sutherland. Her illustration to support that the CCP§998 offer was not made in good faith focuses upon the financial condition of defendant Robin Cayton-Sutherland and how "rotten" Ms. Cayton-Sutherland had been to plaintiff. These have no impact upon, nor do they address, whether the offer was made in good faith as to the Estate. Thus, plaintiff has failed to meet her burden and make a showing that the offer was not made in good faith.

In sum, plaintiff's motion to strike the cost memo is granted. The Estate's cost memo, filed on December 10, 2014, is stricken in its entirety.

#### Plaintiff's Motion for Sanctions

The motion is denied.

### **3. S-CV-0029141 Cooley, David, et al vs. Centex Homes**

Sacramento A-1 Door dba A-1 Door and Building Solutions' Motion for Good Faith Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling party's proportionate share of liability for plaintiffs' injuries, and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

### **4. S-CV-0032111 Susnara, Gary, et al vs. New Horizon Manufactured Homes**

The Motion for a Spousal Earnings Withholding Order is denied.

There is no proof of service in the court's file showing service on the judgment debtor or the spouse of the judgment debtor. Code Civ. Proc. § 706.109. An earnings withholding order against the spouse of the judgment debtor may only be issued upon noticed motion, as community property earnings are unique and may not be liable in some situations. *Id.* and Comment thereto. There is also no showing that a writ of execution has been issued to the county where the judgment debtor's spouse is to be served. Code Civ. Proc. § 706.120(a).

**5. S-CV-0034989 Stewart, Steven vs. Tratten, Tyler, et al**

The Motion to be Relieved as Counsel by Brian P. Connelly, Esq. and the Law Offices of Brian P. Connelly is granted, effective upon the filing of proof of service of the signed order upon plaintiff and all parties who have appeared in the case. Cal. R. Ct., rule 2.1362(e).

**6. S-CV-0035049 Noble, Skylar vs. Equity Link, Inc., et al**

Plaintiff's Motion to Compel Further Responses to Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production to Documents, Set One, is granted.

Defendant Equity Link, Inc. ("Equity Link") shall serve verifications to the subject discovery responses by no later than July 6, 2015. Equity Link shall also serve further full and complete verified responses to Special Interrogatory Nos. 19-23 and Requests for Production Nos. 17-18 which remove all stated objections by no later than July 6, 2015.

Plaintiff's request for sanctions is denied, as the motion was unopposed. Code Civ. Proc. §§ 2030.290(c), 2031.300(c). Although California Rules of Court, rule 3.1348(a) purports to authorize sanctions if a motion is unopposed, the court declines to do so, as the specific statute governing this discovery authorizes sanctions only if the motion was unsuccessfully made or opposed. Any order imposing sanctions under the California Rules of Court must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v. Firmaterr Inc.* (1997) 60 Cal.App.4th 352, 355.

**7. S-CV-0035065 Nationwide Insurance vs. Kaminskiy, Sergey et al**

Plaintiff's request for judicial notice is granted as to Request Nos. 1 and 3. The request for judicial notice is denied as to Request Nos. 2 and 4, as these requests are not in compliance with California Rules of Court, rule 3.1306(c).

Defendants' Motion to Set Aside Default is granted.

The parties to this case have been embroiled in a highly contested action based in Sacramento County Superior Court ("the Sacramento Action") since June 2013. On May 20, 2015, an order out of the Sacramento Action granted Nationwide's motion to stay pending the outcome of the instant action, which seeks a determination regarding insurance coverage issues. A review of the court's records in this action show that defendants have unquestionably been uncooperative with respect to accepting service of process, and were properly served by publication. However, in light of ongoing litigation and defendant's declaration, relief from default is appropriate pursuant to Code of Civil Procedure section 473(b).

Defendants' alternative request to quash service of summons is denied as not properly before the court, as no such request was set forth in the notice of motion.

Although there have been previous filings in this action claiming that defendants neither reside nor receive mail at 3320 Hunter Lane, Carmichael, CA, the court notes for the record that defendants' address of record is established for purposes of these proceedings as noted on their moving papers. Defendants shall file and serve their demurrer to the complaint on or before June 30, 2015.

**8. S-CV-0035213 Eldridge, Jeremy vs. BSH Home Appliances Corporation, et al**

Defendant BSH Home Appliances Corporation's ("BSH") Motion to Compel Further Responses to Discovery Requests From Plaintiff Jeremy Eldridge is granted.

Plaintiff's responses to Request for Production Nos. 4, 6 and 26 fail to comply with the requirements of the Code of Civil Procedure. The party to whom a request for production is directed must respond with either a statement that the party will comply with the particular demand, a statement that the party lacks the ability to comply, or objections. Code Civ. Proc. § 2031.210(a). An agreement to comply must state that the production will be allowed in whole or in part, and that the documents demanded that are in the responding party's possession, custody or control will be produced. Code Civ. Proc. § 2031.220. Plaintiff's responses to the subject requests fail to satisfy the requirements of the Code of Civil Procedure, and it is not clear from the responses whether plaintiff purports to have produced all responsive documents in his possession, custody or control. Plaintiff shall serve verified amended responses to the subject requests which comply with the Code of Civil Procedure, and shall serve all responsive documents in his possession, custody or control, by no later than July 14, 2015.

Plaintiff's responses to Form Interrogatory Nos. 2.3, 2.4, 6.5 and 17.1 fail to comply with the requirements of the Code of Civil Procedure. Plaintiff's objections on the grounds of privacy are meritless. Plaintiff fails to respond directly to each interrogatory, including subparts, and his answers are not as complete and straightforward as the information reasonably available to him permits. Merely referring to other documents is not appropriate. *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783-784. Plaintiff shall serve verified amended responses to the subject interrogatories by no later than July 14, 2015.

Plaintiff's responses to Special Interrogatory Nos. 1-3 and 27 fail to comply with the requirements of the Code of Civil Procedure. In response to these interrogatories, plaintiff attempts to utilize the option of allowing BSH to inspect his files and records, on the grounds that responses to the subject interrogatories would necessitate the making of a compilation or summary of information. However, plaintiff fails to comply with Code of Civil Procedure section 2030.230 by showing that a compilation, abstract, audit or summary of responding party's records is necessary to respond, that no such compilation presently exists, and that the burden or expense of preparing or making it would be substantially the same for BSH as for plaintiff. Further, plaintiff's response fails to refer to Code of Civil Procedure section 2030.230 and fails to specify the documents from which the answer may be derived or ascertained. Code Civ. Proc. § 2030.230; *Fuss v. Superior Court* (1969) 273 Cal.App.2d 807, 815-817. Plaintiff shall serve verified amended responses to the subject interrogatories by no later than July 14, 2015.

**9. S-CV-0035649 Pacific Gas and Electric Co. vs. DF Properties, et al**

The Motion for Prejudgment Possession is continued to July 14, 2015, at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

**10. S-CV-0035651 Pacific Gas and Electric Co. vs. Baseline P & R, LLC, et al**

The Motion for Prejudgment Possession is continued to July 14, 2015, at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

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